



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot *

Commissioners Voting: Chairman Ann Brown
 Commissioner Mary Sheila Gall
 Commissioner Thomas H. Moore

ITEM

Dive Sticks: Advance Notice of Proposed Rulemaking (ANPR)

DECISION

The Commission voted unanimously (3-0) to approve a Federal Register notice issuing an advance notice of proposed rulemaking (ANPR) addressing a risk of injury associated with certain dive sticks. Commissioner Gall issued a statement concerning the vote in this matter, copy attached.

For the Commission:

A handwritten signature in cursive script, reading "Sadye E. Dunn".

Sadye E. Dunn
Secretary

* Ballot due July 9, 1999



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**STATEMENT OF THE HONORABLE MARY SHEILA GALL VOTE
TO ISSUE AN ANPR ON DIVE STICKS**

July 9, 1999

In voting to approve the issuance of an advance notice of proposed rulemaking ("ANPR"), by ballot vote, to initiate a rulemaking that could result in declaring certain "dive sticks" to be a "banned hazardous substance", I believe it is necessary to note the unusual circumstances surrounding this issue. In all but the rarest of circumstances, a rulemaking ought to be initiated by means of a public hearing, during which time the Staff briefs the Commission, and simultaneously places the public on notice, of the basis for a prospective rulemaking.

I have agreed to proceed on this particular ANPR via a ballot vote based upon exceptional circumstances. Specifically, on June 24, 1999, the manufacturers, importers and retailers of these articles entered into a recall program with the Commission. This product was recalled because of a number of impalement incidents causing serious injuries. There was a considerable amount of publicity produced as a consequence of this recall. Furthermore, during the negotiation of this recall, the Commission had been fully briefed on the nature of the hazard posed by these "dive sticks".

An open hearing is the preferred procedure for initiating an ANPR because it serves the purpose of placing the public -- both consumers and industry -- on notice and provides a forum in which the Commission is briefed in the "sunshine". This is a matter of fairness and sound public policy. However, given the full exposition of facts and the attendant publicity noted above, I deemed it appropriate to proceed by ballot vote in order to expedite the resolution of this issue.